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Common Market for Eastern and Southern Africa

Case File No. CCC/MER/08/24/2023

Decision[1] of the One Hundred and First (101st) Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Acquisition of up to 100% of the total issued share capital of Compagnie Générale De Banque Plc by Equity Group Holdings Plc

ECONOMIC SECTOR: Banking and Financial Services

COMESA COMPETITION COMMISSION 05 NOV 2023

5 November 2023

[1] In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the "**COMESA Treaty**");

Having regard to the COMESA Competition Regulations of 2004 (the "**Regulations**"), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the "**Rules**");

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State,

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration,

Having regard to the COMESA Merger Assessment Guidelines of 2014,

Determines as follows:

Introduction and Relevant Background

1. On 24 August 2023, the COMESA Competition Commission (the "**Commission**") received a notification for approval of the proposed acquisition of up to 100% of the total issued share capital of Compagnie Générale De Banque plc ("**Cogebanque**" or the "**Target**") by Equity Group Holdings Plc ("**Equity Group**" or the "**Acquirer**"), pursuant to Article 24(1) of the Regulations.

2. Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the transaction between the parties would or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market.

3. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.

The Parties

Equity Group

4. Equity Group is a public limited liability company established under the laws of Kenya. It is a non-operating holding company regulated by the Central Bank of Kenya. Through its banking subsidiaries, Equity Group has operations in Kenya, Uganda, South Sudan, Rwanda, Tanzania, the Democratic Republic of Congo ("**DRC**") and has a Commercial Representative office in Ethiopia. It also has non-banking subsidiaries engaged in investment banking and stock-broking, custodial services, life assurance and insurance agency, and social initiatives and interventions.

Cogebanque

5. Cogebanque, is a public limited liability company incorporated under the laws of Rwanda whose principal activity is the provision of retail, small and medium enterprises ("SME"), and corporate banking services. Within the Common Market, the Target operates only in Rwanda through a network of twenty-eight (28) branches and six hundred (600) active agents spread throughout Rwanda.

Jurisdiction of the Commission

6. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission. Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") provides that:

Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or the *target firm, operate in two or more Member States, shall be notifiable if:*

a) the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds USD 50 million; and

b) the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds USD 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one and the same Member State.

7. The undertakings concerned have operations in two or more Member States. The merging parties hold a combined asset value in excess of the threshold of USD 50 million in the Common Market. In addition, the parties do not hold more than two-thirds of their respective aggregate COMESA-wide asset value within one and the

same Member State. The notified transaction is therefore notifiable to the Commission within the meaning of Article 23(5)(a) of the Regulations.

Details of the Merger

8. The proposed transaction entails the acquisition of up to 100% of the total issued share capital of Cogebanque by Equity Group.

COMPETITION ASSESSMENT

Consideration of the Relevant Markets

Relevant Product Market

9. The CID considered that merging parties are both active in the provision of banking services which include retail and corporate banking services. The proposed transaction raises horizontal overlap in respect of banking services as such the assessment of the relevant product market is limited to banking services as follows.

Provision of retail and corporate banking services

10. Banking services can be categorised according to the type of customer, whether at retail or corporate level. Retail banking entails all banking services provided to private individuals and very small enterprises, such as deposit account services (current or savings accounts; cash deposits; and cheque collection); payment services (i.e., ATM services, payment card issuing, credit transfer, direct debit, standing orders and cheques); lending (i.e., personal loans, consumer credit, overdraft facilities, mortgages etc.); and investment products such as mutual funds, pension funds and securities brokerage and custody services (management of custody accounts and processing of corporate actions such as dividend distribution)[2].

11. Corporate banking services are tailor-made services offered to corporate clients in the context of corporate financing and raising capital and these include cash management, working capital finance, term loans, asset finance, trade and specialised finance, pre- and post-shipment finance, structured finance, treasury services and commodity finance.

12. Although deposit and loan services are available to both retail and corporate customers, there are differences in the eligibility requirements and the breadth of the services available to the two customer categories. For instance, products offered to corporate vis-a-vis retail customers differ in terms of minimum deposits, loan ceilings, and maximum daily allowable payment limits. Thus, corporate

[2] See case No M.8414 – DNB / Nordea / Luminor Group, paragraph 15, dated 14/09/2017

customers may be entitled to higher loan ceilings and their accounts may be open to higher daily payment limits which may not be the case for retail customers. A plausible explanation for this is that corporate customers are likely to bring more business and make large deposits to a bank as opposed to retail customers and for this reason they have more bargaining power over the banks and access various products under favourable terms and conditions.

13. It may be argued that retail customers may shift to the corporate category such that the markets for deposit or lending services could be construed widely as opposed to delineation by customer category. However, an assessment of the likelihood and timeliness of substitution given a 5 – 10 % increase in the price of accessing retail banking services should be considered to confirm the practicality of widening the market.

14. Customers in the retail banking are unlikely to be induced and switch to corporate banking as they may not satisfy the requirements of corporate banking in a timely manner due to required additional fees under corporate banking and at times higher minimum account balances may be required.

15. In terms of characteristics, while retail banking has a large clientele with small-value accounts, the opposite applies to corporate banking whose profile comprise a small clientele with significant high-value accounts. In this respect, the banking services can be distinguished from a supply perspective. Further, retail banking products/services tend to be standardised and customer-oriented while corporate banking is business-oriented and tailored or customized to the specific needs and requirements of the clients.

16. In view of the above, it can be concluded that the corporate and retail banking comprise distinct markets. Further, the respective deposit, lending or other services provided to corporate and retail customers may be construed as separate markets as per the customer category in question.

Provision of retail deposit, lending and payment services v. provision of corporate deposit, lending and payment services

17. The CID considered that a distinction should be made between deposit, lending, and payment services provided by a bank. A deposit service has elements of an investment that an account holder makes by depositing money with a bank for safekeeping and/or interest-earning in the future. To the contrary, lending services/loans entail the provision of funds by a bank to its customers which is repayable in future with interest. Furthermore, other forms of loans require the provision of a collateral by the customer to a bank as a means of covering for future risks of defaulting. Payments include various types of payments services such as credit transfers, direct debits, card payments, payments by cheque and

other payment services[3]. Payment services play the role of facilitating movement of funds whether cash deposits to, or cash withdrawal from, the bank through electronic payment systems.

18. The above products offered by the bank are considered distinct on account of the different characterises and intended purposes. In this respect, there is no likely demand substitutability among loans, deposits, and payment services given the differences in the intended purpose under each product or service. Thus, a customer who requests for a loan for investment purposes will not be affected by the rates on deposit accounts as he/she cannot substitute with the latter to fulfil the intended needs. Each product has its own distinct purpose and separate pre-conditions and requirements to be fulfilled by the customer.

19. In view of the foregoing, the CID concluded that banking services can generally be categorized as retail and corporate banking services in view of the two broad customer categories that banks serve. Further, the CID noted that the products/services demanded by retail and corporate banking still differ according to the characteristics and intended purposes for each service. Therefore, the CID considered that loan, deposit, and payment services when categorised by the retail and corporate customers to whom the services are intended, comprise distinct markets. This approach is consistent with the CID's previous decisions in similar cases[4].

20. Based on the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant product markets are construed as follows:

    a) Provision of corporate deposit services,
    b) Provision of corporate lending services,
    c) Provision of corporate payment services,
    d) Provision of retail deposit services,
    e) Provision of retail lending services, and
    f) Provision of retail payment services

Relevant Geographic Market

21. The CID observed that both parties have operations in Rwanda. Further, the CID noted that in view of the operating licenses issued to commercial banks by central banks in the respective Member States, the regulatory regime is likely to be heterogenous across countries, thus the relevant markets are likely to be national.

22. However, the CID considered that retail payment services may not be strictly restricted to national boundaries given the possibility of access by customers on a

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[3] Case M.8414 - DNB/Nordea/Luminor Group

[4] See Case File No. CCC/MER/02/03/2021 - Bank ABC and Blom Bank Egypt, paragraph 12

cross-border basis via various payment platforms. For instance, Visa, Mastercard, and other card payment systems are usable beyond national boundaries where the issuing bank will honour the payment by debiting the account of the cardholder irrespective of the jurisdiction where the payment was effected. However, the CID noted that payment services are linked to the core product and services provided by the bank, such as deposit and loan services, which will require the customer to hold an account with the bank in the resident country of the account holder.

23. The CID considered that retail customers tend to own deposit accounts in their country of residence. The CID concluded that the market for retail payment services was national, despite the possibility that a banker may eventually supply this service to the customer outside their country of residence. The CID further considered that even if payment services may be provided beyond national boundaries, a narrower market definition would not alter the disposition of the case and the market may be regarded as national.

24. Retail customers are likely to access deposit and loan services from banks within their territory as this would be the most convenient means to ease access to their bank and loan facilities. Further, the regulatory policy governing deposit and lending services may not allow a customer to access these services beyond their country.

25. From a demand perspective, it is unlikely that a significant number of retail customers located in Rwanda would substitute access to loan and deposit services from Rwanda to another country in response to a small but significant increase in the price of retail banking services in Rwanda. From a supply perspective, it is also unlikely for the merging parties to timely relocate and start offering services from Rwanda to other Member States in an event of a SSNIP due to banking regulatory requirements.

26. With regards to corporate banking, the CID observed that some corporate customers tend to hold bank accounts across jurisdiction to facilitate their businesses. For instance, global business companies and multinational corporations operating in the Common Market are likely to hold operational accounts in the Common Market while maintaining their main accounts outside the Common Market where they are headquartered. Corporate customers may also favour the option of holding accounts outside the Common Market in countries where it is easy to move their funds and where interest rates are more favourable to their business.

27. The above demonstrates that the geographic scope for retail banking is likely to be national given the limited possibility of timely substitution of the products/services. The CID concluded that in the event of a SSNIP, a bank operating at national level is unlikely to swiftly shift its operations to another

country to take advantage of the prospect of profits. Given that the parties' activities in the provision of retail banking products/services only overlap in one geographic market, Rwanda, the relevant geographic market for the related markets is determined as Rwanda.

28. In relation to corporate banking, the CID considered that the market is likely to be global in view of demand-side substitutability, especially for large corporate customers who may engage bankers beyond their national boundaries. For the purposes of the assessment, given that the precise geographic delimitation of the relevant sub-markets will not alter the disposition of the case, the CID considered that the geographic dimension of the relevant sub-markets is global.

Conclusion of Relevant Market Definition

29. Based on the foregoing assessment, and without prejudice to the CID's approach in similar future cases, the relevant markets have been identified as:

a) Provision of retail deposit services in Rwanda,
b) Provision of retail lending services in Rwanda,
c) Provision of retail payment services in Rwanda,
d) Global provision of corporate deposit services,
e) Global provision of corporate lending services, and
f) Global provision of corporate payment services.

Market Shares and Concentration

30. The merging parties both provide retail and corporate banking services in Rwanda. Within these general categories, the parties compete with eight (8) commercial banks, three (3) microfinance banks, and over four hundred (400) microfinance institutions that offer deposit and lending services in the retail banking segments.

31. The CID noted that at corporate level, the merging parties compete with the Development Bank of Rwanda and other multiple payment service providers licensed by the National Bank of Rwanda.

32. The CID considered the estimated market shares for the parties and their competitors in lending and deposit services in Rwanda, where a horizontal overlap arises due to the merger as follows.

Table 1 – Market Shares for the lending and deposit services in Rwanda as of 31 December 2022

Relevant Market	Entity	Approximate Market Shares (%)
Lending service	Bank of Kigali	46%
	BPR Bank of Rwanda	17.97%

	Equity Bank	***10%***
	I&M Bank	9%
	Cogebanque	***6%***
	NCBA Bank	3%
	Bank of Africa	3%
	EcoBank	2%
	Access Bank	2%
	GT Bank	1%
Deposit Service	Bank of Kigali	38%
	BPR Bank of Rwanda	15%
	Equity Bank	**12.38%**
	I&M Bank	10%
	Cogebanque	**6%**
	EcoBank	6%
	Access Bank	4%
	GT Bank	3%
	NCBA Bank	3%
	Bank of Africa	2%
Total Assets	Bank of Kigali	38%
	BPR Bank of Rwanda	16%
	Equity Bank	**12%**
	I&M Bank	10%
	Cogebanque	**6%**
	EcoBank	5%
	Access Bank	4%
	Bank of Africa	3%
	NCBA Bank	3%
	GT Bank	3%

33. The CID observed that the lending and deposit markets in Rwanda are fragmented with numerous players providing these services. Therefore, the markets can be considered as competitive with the presence of alternative providers to whom customers may switch should the merging parties offer unfavourable terms.

34. The CID considered Paragraph 8.6 of the Merger Assessment Guidelines which provides that, "*the Commission will consider mergers that result in substantially*

larger market shares or increase market concentration as more likely to give rise to an SPLC." Therefore, an assessment of the market shares and market concentration was considered to confirm any likely competition effects.

35. The CID also considered Paragraph 8.10 of the Merger Assessment Guidelines further provides that, "*the Commission is unlikely to find concern in horizontal mergers, be it of a coordinated or of a non-coordinated nature, where the market share post-merger of the new entity concerned is below 15% and the sum of the market shares of the top three firms is less than 70%.*"

36. In view of the provisions of the Merger Assessment Guidelines, the CID considered the market concentration (CR3) assessment as follows:

<u>*Market for lending services*</u>
Pre-merger: Bank of Kigali (46%) + BPR Bank of Rwanda (17.97%) + Equity Bank (10%) = 73.97%

Post-merger: Bank of Kigali (46%) + BPR Bank of Rwanda (17.97%) + Merged Entity (16%) = 79.97%

<u>*Market for deposit services*</u>
Pre-merger: Bank of Kigali (38%) + BPR Bank of Rwanda (15%) + Equity Bank (12.38%) = 65.38%

Post-merger: Bank of Kigali (38%) + BPR Bank of Rwanda (15%) + Equity Bank (18.38%) = 71.38%

37. The CID observed that in the markets for lending and deposit services, the merger will result in an increase in market concentration. In the market for lending services, the merged entity will hold a market share of **16%** and the market concentration will shift from **73.97%** to **79.97%.** In the market for deposit services, the merged entity will hold a market share of **18.38**% and the market concentration will change from **65% to 71%.**

38. In line with Paragraphs 8.6 and 8.10 of the Merger Assessment Guidelines, the CID considered that the proposed transaction is likely to result in substantial prevention and lessening of competition in these two markets given the resultant increase in market concentration and that the post-merger market shares for the top three firms will fall above 70% and the post-merger market shares for the merged entity will be above 15%. Further, the merged entity will emerge among the top three players in these markets. Therefore, the proposed transaction may raise coordinated or non-coordinated effects.

39. The CID further assessed the Herfindahl-Hirschman Index ("HHI") in the relevant market(s). The CID noted that a market with an HHI of less than 1,500 is considered competitive while an HHI of 1,500 to 2,500 is moderately concentrated and an HHI of 2,500 or greater is considered highly concentrated.[5] Further, mergers that increase the HHI between 100 and 200 points potentially raise significant competitive concerns and often warrant scrutiny. Mergers that increase HHI by more than 200 points in highly concentrated markets will generally raise anti-trust concerns since they are assumed to raise market power. Below is a presentation of the HHI for the pre and post-merger HHI for the lending and deposit services in Rwanda.

<u>*HHI for lending services*</u>

Pre-Merger: $(46\%)^2 + (17.97\%)^2 + (10\%)^2 + (9\%)^2 + (6)^2 + (3)^2 + (3)^2 + (2)^2 + (2)^2 + (1)^2 = (2116) + (322.9209) + (100) + (81) + (36) + (9) + (9) + (4) + (4) + (1) = 2682.9209$

Post-Merger: $46\%)^2 + (17.97\%)^2 + (16\%)^2 + (9\%)^2 + (3)^2 + (3)^2 + (2)^2 + (2)^2 + (1)^2 = (2116) + (322.9209) + (256) + (81) + (9) + (9) + (4) + (4) + (1) = 2802.9209$

<u>*HHI for deposit services*</u>

Pre-Merger: $(38\%)^2 + (15\%)^2 + (12.38\%)^2 + (10\%)^2 + (6)^2 + (6)^2 + (4)^2 + (3)^2 + (3)^2 + (2)^2 = (1444) + (225) + (153.2644) + (100) + (36) + (36) + (16) + (9) + (9) + (4) = 2032.2644$

Post-Merger: $(38\%)^2 + (15\%)^2 + (18.38\%)^2 + (10\%)^2 + (6)^2 + (4)^2 + (3)^2 + (3)^2 + (2)^2 = (1444) + (225) + (337.8244) + (100) + (36) + (16) + (9) + (9) + (4) = 2180.8244$

40. The CID observed that the market for lending was highly concentrated given an HHI of above 2500 points (i.e., **2682.9209**) while the market for deposit is moderately concentrated given an HHI between 1500 and 2500 points (i.e., **2032.2644**). Post-merger, the HHI for lending services will increase by **120 points** (i.e., **2802.9209 – 2682.9209)** while the HHI for deposit services will increase by **148.56 points (2180.8244 – 2032.2644)**. Accordingly, the proposed transaction is likely to raise competition concerns in the markets for deposit and lending services which are respectively, moderately and highly concentrated pre-merger with the concentration likely to increase, post-merger. the CID observed that the proposed transaction is more likely to raise concerns given the increase in HHI of between 100 – 200 in both markets (i.e., 120 for lending services and 148 for deposit).

[5] https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf

41. With regards to the market for payment services, the CID noted that the parties did not submit their estimated market shares and market shares of their competitors. However, the CID observed that payment services play the role of supporting the core services of a bank such as deposit and lending services. Therefore, the likely competition concerns in the lending and deposit markets are likely to also manifest in the markets for payment services.

42. Considering the above, the CID further assessed the likely coordinated and non-coordinated behaviour of the merged entity to confirm or dispel any competition concerns.

43. With regard to non-coordinated behaviour, the CID considered that the merged entity will not assume a position of dominance hence unlikely to unilateral engage in a foreclosure strategy. Further, the relevant markets are characterised by several players that will continue to exert competitive pressure and constrain the merged entity's incentives to engage in unilateral conduct. This will reduce the incentive and ability of the merged entity to increase its prices post-merger.

44. The CID considered that even though the proposed transaction results in a horizontal overlap and reduction in the number of players in the relevant markets, the target entity is not a significant player. The transaction will not remove an effective competitor from the relevant markets. Further, even though the merged entity is amongst the top three players, the market is still characterised by several other players that will compete with the top three firms and render any coordination unsustainable. Hence, the state of competition pre- and post-merger is expected to be the same, as the change in the market shares is not significant. The CID therefore considered that this overrules the possibility of coordinated effects in the relevant markets.

Consideration of Third-Party Views

45. The CID considered submissions from the national competition authorities of Kenya and Rwanda which did not raise any concerns in relation to the transaction, which submissions are consistent with the CID's findings, as discussed above.

Determination

46. Based on the circumstances of the case and having regard to the foregoing assessment, the CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market or a substantial part of it, nor be contrary to public interest. The CID further determined that the transaction is unlikely to negatively affect trade between Member States. The CID, therefore, approved this transaction.

47. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 5th day of November 2023

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Lloyds Vincent Nkhoma

Commissioner Islam Tagelsir Ahmed Alhasan